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U.S. Department of Homeland Security  
20 Mass. Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: PHOENIX DISTRICT OFFICE Date:

SEP 2 2014

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a lawful permanent resident, Julio Bautista, and the mother of a U.S. citizen son.

The district director found that the applicant had failed to establish extreme hardship to her lawful permanent resident spouse. The application was denied accordingly.

On appeal, counsel contends that the district director failed to consider all relevant factors, and that the applicant established that the refusal of her admission would cause extreme hardship to her husband. In support of the appeal, counsel submits a brief, an evaluation by a certified school psychologist, documents related to her husband's employment, and statements from the applicant, her husband, her son, a reverend of her church, school officials, and others, under the heading, "Evidence of Applicant's Strong Ties." *Applicant's Brief in Support of Appeal, Exhibit 6* (September 4, 2003). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent misrepresentation in order to gain admission to the United States on or about April 18, 2001. *Decision of the District Director* (July 15, 2003) at 2. The district director's determination of inadmissibility is not contested on appeal. Section 212(i) of the Act provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1186(i). Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that the record contains several references and documentation addressed to the hardship that the applicant's child would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the Federal statute for which the hardship determination is permissible, and hardship to the applicant's child will not be considered.

The applicant's husband [REDACTED] was born in Mexico, but has resided in the United States since 1985. See *Letter of Elsa H. Holtzman, Ph.D.* (August 17, 2003), at 1. Two of his three brothers live in the United States and work with him in drywall finishing. *Letter of David Dye, Superintendent, Design Drywall West, Inc.* (August 4, 2003). His father lives in the United States as a lawful permanent resident. *Letter of Elsa H. Holtzman, supra*, at 1. His mother is deceased. *Id.* He and the applicant have one son, born in the United States. The record indicates that he has one brother and a half-sister in Mexico. *Id.* The record reflects that country conditions in Mexico include diminished educational opportunities, problems with health care, and widespread poverty. *Applicant's Brief in Support of Appeal* at 5. The record shows that the applicant and her husband have bank accounts totaling over \$40,000. For the latest tax year documented in the record, 1996, it appears that [REDACTED] employment provided 100% of the household's income. There is evidence that since that time, the applicant has obtained employment with a local elementary school as a crossing guard, although the record does not contain evidence of her salary, if any. The record does not contain any evidence that any member of the family suffers from a serious medical condition.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if he remains in the United States and the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.